

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

G4S SECURE SOLUTIONS (USA) INC., *etc.*

and

Case 12-CA-26644

THOMAS FRAZIER, an individual

Case 12-CA-26811

CECIL MACK, an individual

**RESPONDENT’S REPLY BRIEF TO COUNSEL FOR THE GENERAL COUNSEL’S
ANSWERING BRIEF TO RESPONDENT’S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Respondent G4S Regulated Security Solutions, a division of G4S Secure Solutions (USA) Inc. (“Respondent”) submits the following Brief in Reply to Counsel for the General Counsel’s Answering Brief to Respondent’s Exceptions to the Decision of the Administrative Law Judge (“ALJ”).

Exception No. 1:

In his argument in opposition to Respondent’s Exception No. 1, Counsel for the General Counsel (“General Counsel”) essentially contends that Cecil Mack’s testimony regarding his interim earnings in the third quarter of 2010 should not have been credited by the ALJ because (a) Mack’s testimony in this regard was “based on his best recollection at that time for incidents that occurred 8 years prior to the hearing,” and (b) his testimony was less credible than information contained in a document that appears to be from the State of Florida, Respondent’s Exhibit 1. General Counsel’s contentions in this regard lack merit.

First, General Counsel did not elicit any testimony from Mack at the hearing to clarify that, contrary to what he stated, Mack did not really mean to testify that he started working at Rent-A-Wheel in mid-August 2010, as opposed to some later date. Nor did General Counsel ask Mack any questions about whether Mack's recollection on this point was clear or not. As such, General Counsel should not now be permitted to ask the Board to ignore Mack's testimony in this regard.

Second, General Counsel places great reliance on a document that appears to be from the State of Florida's Department of Revenue, Respondent's Exhibit 1. Other than the fact that the Board's Compliance Officer presumably relied upon that document in putting together the Amended Compliance Specification, there was no testimony or other evidence regarding the nature of the document, where it came from, on what information or documents the State of Florida relied upon in creating such a document, etc. As such, and without such foundational evidence, there is no reason to credit such a document over the testimony of the individual whose earnings are at issue.

Third, General Counsel seeks to introduce new evidence into the record, based on his assertion that the information can be obtained through a "simple internet search." (General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the ALJ at n.3.) Simple search or otherwise, General Counsel has no right to seek to introduce additional evidence in this manner. In this day and age, substantial information can be obtained through a "simple internet search." Respondent presumably has no right at this time to supplement the record based on evidence it might be able to obtain through the internet, perhaps showing additional detail regarding job positions that were open and available during the relevant period

of time or that Mack was in school and, therefore, unavailable for work during portions of the relevant period of time. Since Respondent has no such right, General Counsel should not be permitted to introduce new evidence in this way.

Finally, General Counsel argues that any ambiguities should be held against Respondent because Respondent could have subpoenaed documents from Rent-A-Wheel or submitted a FOIA request to the Florida Department of Revenue. It should be noted, however, that Respondent sought to obtain more detailed information and evidence regarding Mack's interim earnings directly from Mack. Because the Board procedures generally do not allow for pre-hearing discovery, Respondent had no way of knowing until the Hearing that Mack would not provide any of the requested pay stubs that would have provided absolute clarity on the issue of when he started working for Rent-A-Wheel and how much he made in any given pay period. As such, it would not be reasonable to hold any such ambiguities against Respondent in this particular situation.

Exception No. 2:

General Counsel makes the same general arguments in support of his opposition to Respondent's Exception No. 2. Specifically, General Counsel contends that Mack's testimony regarding his interim earnings in the second quarter of 2011 should not have been credited by the ALJ because (a) Mack's testimony in this regard was "vague;" and (b) his testimony was less credible than information contained in Respondent's Exhibit 1. General Counsel's contentions in this regard lack merit for the same reasons as his argument in opposition to Respondent's Exception No. 1.

First, General Counsel did not elicit any testimony from Mack at the hearing to clarify that Mack did not really mean to testify that he was discharged by Rent-A-Wheel until mid-June 2011, as opposed to some earlier date, or that he did not really have a clear recollection on this point. As such, General Counsel should not now be permitted to ask the Board to ignore Mack's testimony in this regard.

Second, General Counsel places great reliance on a document that appears to be from the State of Florida's Department of Revenue, Respondent's Exhibit 1. Other than the fact that the Board's Compliance Officer presumably relied upon that document in putting together the Amended Compliance Specification, there is no testimony or other evidence regarding the nature of the document, where it came from, on what information or documents the State of Florida relies upon in creating such a document, etc. As such, and without such foundational evidence, there is no reason to credit such a document over the testimony of the individual whose earnings are at issue.

Exception Nos. 3-8:

Respondent has nothing further to add in support of its Exception Nos. 3-8, and in rebuttal to General Counsel's arguments, other than to say that General Counsel generally and mistakenly seeks to have the Board ignore the testimony of the person with the most knowledge on the salient points relative to Exception Nos. 3 and 4 - Mack. Respondent's arguments otherwise are fully set forth in its Exceptions.

/s/ Fred Seleman

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Certificate of Service

On February 14, 2019, the foregoing was filed electronically and a copy served by way of electronic mail on John King, Counsel for the General Counsel, at John.King@nrlrb.com; Thomas Frazier at tomfrazier@gmail.com; and Cecil Mack at cecilmack3@gmail.com.

/s/ Fred Seleman

Vice President, Labor & Employment Law

G4S Secure Solutions (USA) Inc.